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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Holly Martenson,) No. CV-09-01314-PHX-NVW
10 Plaintiff,) **ORDER**
11 vs.) [NOT FOR PUBLICATION]
12)
13 RG Financing, et al.,)
14 Defendants.)
15 _____)

16 Before the Court is JL Financing and RG Financing's Motion for Partial Summary
17 Judgment on Counts 1, 2, 4, 6, 8 and 10 of Plaintiff's Second Amended Complaint and
18 Plaintiff's Motion for Leave to File Third Amended Complaint and Supplemental
19 Complaint (Docs. 73, 90). Plaintiff's motion to amend is unopposed and therefore will be
20 granted.

21 **I. Legal Standard for Summary Judgment**

22 Summary judgment is proper if the evidence shows there is no genuine issue as to
23 any material fact and the moving party is entitled to judgment as a matter of law. Fed. R.
24 Civ. P. 56(c). On summary judgment, the nonmoving party's evidence is presumed true,
25 and all inferences from the evidence are drawn in the light most favorable to the
26 nonmoving party. *Eisenberg v. Ins. Co. of North America*, 815 F.2d 1285, 1289 (9th Cir.
27 1987).
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1 **II. Background**

2 On November 29, 2006, Martenson refinanced her home loan through a mortgage
3 broker, Buy American Real Estate, by executing a Deed of Trust and Note for which JL
4 Financing is the beneficiary and lender. RG Financing is the loan servicer for
5 Martenson's loan. In May 2007, Martenson fell behind on her loan payments, and on
6 June 8, 2009, the property subject to the Deed of Trust was sold at a trustee's sale to JL
7 Financing. The factual and procedural history of this case is described in previous Orders
8 (Docs. 56, 97).

9 **III. Analysis**

10 JL Financing and RG Financing move for partial summary judgment on Counts 1,
11 2, 4, 6, 8, and 10 of the Second Amended Complaint. Martenson has withdrawn Count 1
12 (Truth in Lending Act) and Count 10 (Quiet Title) of the Second Amended Complaint in
13 her proposed Third Amended Complaint.

14 Count 2 of the Second Amended Complaint (Count 1 of the Third Amended
15 Complaint) alleges that JL Financing violated the Real Estate Settlement Procedures Act
16 ("RESPA") by making or authorizing payment of "loan discount fees" to third parties that
17 were actually referral fees or kickbacks unrelated to services actually performed. *See* 12
18 U.S.C. § 2607(a), (b). The one-year limitations period for RESPA claims for illegal
19 kickbacks and unearned fees expired November 29, 2007, and Martenson's response to
20 the motion for partial summary judgment does not provide any evidence to support
21 equitable tolling of the limitations period. *See* 12 U.S.C. §§ 2607, 2614.

22 Count 4 of the Second Amended Complaint (Count 3 of the Third Amended
23 Complaint) is titled "Unconscionability" against Buy American, JL Financing, and RG
24 Financing. It alleges that "Defendants" made this loan to Martenson without regard to
25 her ability to repay, took advantage of her by processing a loan knowing it could not get
26 the terms she expected, and did not explain the closing documents to her. It does not
27 allege any wrongdoing by JL Financing or RG Financing specifically. Count 6 of the
28 Second Amended Complaint (Count 5 of the Third Amended Complaint), titled

1 “Predatory Lending,” alleges that “RG Financing and JL Financing engaged in a course
2 of conduct which included breach of contractual duties owed plaintiff under the Deed of
3 Trust and dishonoring of loan modification/payment agreements.” Count 8 of the Second
4 Amended Complaint (Count 7 of the Third Amended Complaint) alleges breach of the
5 covenant of good faith and fair dealing against JL Financing and RG Financing. In
6 defense of these counts against summary judgment, Martenson contends that she “was a
7 terribly unsophisticated borrower,” she relied extensively on Buy American in the loan
8 transaction, the loan terms were one-sided, she was unaware of the volatile nature of the
9 loan payments that would be due as her interest rate adjusted, “Defendants hardly
10 facilitated plaintiff’s payments on the loan,” and Defendants accepted payments from
11 Martenson (after she was in default) without informing her they would postpone the sale
12 of her home only a few days. Martenson does not dispute, however, that during the loan
13 transaction she did not deal with JL Financing or RG Financing, only Buy American. She
14 does not dispute that she made several loan payments to RG Financing. She does not
15 dispute that she defaulted on her loan before the interest rate adjusted. Martenson has
16 provided no evidence that supports finding JL Financing or RG Financing liable for
17 unconscionability, predatory lending, or breach of the covenant of good faith and fair
18 dealing.


19 Therefore, presuming Martenson’s evidence is true and drawing all inferences in
20 her favor, the evidence shows there is no genuine issue as to any material fact, and JL
21 Financing and RG Financing are entitled to judgment as a matter of law on Counts 1, 2, 4,
22 6, 8, and 10 of the Second Amended Complaint.

23 IT IS ORDERED that Plaintiff’s Motion for Leave to File Third Amended
24 Complaint and Supplemental Complaint (Doc. 90) is granted.

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1 IT IS FURTHER ORDERED that JL Financing and RG Financing's Motion for
2 Partial Summary Judgment on Counts 1, 2, 4, 6, 8 and 10 of Plaintiff's Second Amended
3 Complaint (Doc. 73) is granted.

4 DATED this 21st day of September, 2010.

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Neil V. Wake
United States District Judge